

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: PRASHANT SARAN, WHOLE TIME MEMBER**

ORDER

Under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 read with Regulation 65 of the Securities and Exchange Board of India (Collective Investment Scheme) Regulations, 1999

IN THE MATTER OF CAPACIOUS FARMING PRIVATE LIMITED

In respect of Capacious Farming Pvt. Limited and its Directors, viz., Mr. Gaurav Yadav, Mr. Gurbakhsh Singh and Ms. Narmin Kaur Yadav

Date of Hearing: January 16, 2015 and February 03, 2015

Appearance: Mr. Summet Singh Dhir, Chartered Accountant,
Mr. Puneet Kansal, Advocate

For SEBI: Mr. Mohammad Atif Alvi, Deputy General Manager
Mr. Pradeep Kumar, Assistant General Manager,
Ms. Pooja Singh, Assistant General Manager.

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') on receipt of a complaint came to know that a company, Capacious Farming Pvt. Limited (hereinafter referred to as 'Capacious'/ 'the Company') is collecting money from the public. SEBI vide its letter dated March 08, 2013, advised Capacious to submit certain details/ documents including its Memorandum and Articles of Association, details of promoters and past and present directors, brochures pertaining to the schemes/ projects, application forms, sample copies of the certificates and agreements, number of investors and amount collected in each such plan/ scheme, annual returns, number of plans/ schemes launched/ proposed, structure and terms and conditions of each such plan/ scheme, etc., in order to ascertain whether it was carrying on the activities of a 'Collective Investment Scheme' (hereinafter referred to as 'CIS').

2. Capacious vide its letters dated March 13, 2013, requested for time to reply to the letter of SEBI. Vide another letter dated May 07, 2013, Capacious replied to the SEBI letter and submitted as under:
 - a. Capacious was incorporated on March 10, 2011, with an objective to carry on the business of trading of animals and animal products; run and operated a dairy farm, poultry farm, piggery, goat farm; processing, packing and trading in all kinds of animal products.
 - b. It was not in the business of CIS. There were no investors in the Company. Once the animals were sold, the Company did not involve with the purchasers except when they want to buy more animals. The purchasers were free to use the animals in any way they wanted. The Company had no share in their profits.
 - c. The Company ran a goat and pig farm in 5 acre of land in Nathapura Village, Tehsil Natha, Distt. Bhatinda, Punjab, with an objective to raise and sell animals to individuals/ corporate, who were desirous of buying the animals for their personal or business use. About 1,200 goats and 400 pigs are owned by the Company.

The Company along with its letter also submitted the documents such as balance sheets for the year 2011-12, Memorandum and Articles of Association, annual returns since incorporation as filed with the Registrar of Companies (hereinafter referred to as 'RoC'), income tax returns for the financial year ending March 31, 2012.

3. In the meantime, SEBI vide its letter dated May 29, 2013, sought information about the Company from the RoC, which were provided vide letter dated June 14, 2013. Vide another letter dated January 20, 2014, Capacious submitted additional documents i.e., copy of filled in application forms, executed sale agreements pertaining to the sale through lump sum payment. A letter from Capacious which was received by SEBI on March 10, 2014, gave certain data on sale and purchase of goats/ pig for the financial year 2011-12. This letter stated that Capacious had made 'outward' sale of 3,499 goats amounting to 2,40,79,541 at the rate of 6,881.84 per goat.
4. On consideration of the documents available on record, SEBI *prima facie* found that the scheme/ arrangement of Capacious are in the nature of CIS. A show cause notice

(hereinafter referred to as 'SCN') dated May 12, 2014 was issued to Capacious and its directors namely Mr. Gaurav Yadav, Mr. Gurbakhsh Singh and Ms. Narmin Kaur Yadav (hereinafter collectively referred to as 'noticees') advising them to show cause as to why appropriate directions under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') should not be issued against them for the alleged violations. The SCN indicated that the noticees may send their replies within 21 days from the receipt of the SCN failing which it shall be presumed that noticees do not have any explanation to offer and that the proceedings will be concluded *ex parte* on the basis of the material available on record.

5. The noticees vide separate letters all dated June 03, 2014, requested for extension of fifteen days' time for submitting the reply to the SCN. Vide SEBI letter June 11, 2014, the noticees were advised to submit the reply to the SCN by June 30, 2014. In the meantime, the noticee namely Ms. Narmin Kaur Yadav vide her letter dated June 16, 2014, submitted that she was one of the first directors of Capacious and as she was not keeping good health and had remained under medical treatment for several months and was unable to perform any of the activity in the Company, she had resigned on March 27, 2011, which was duly accepted on March 30, 2011. She also said that she was never involved in any of the activities of the Company during her tenure of 20 days. It was also submitted that during those 20 days there was no business of any kind. An opportunity of personal hearing was also requested by her.

Capacious and the other two directors namely Mr. Gaurav Yadav and Mr. Gurbakhsh Singh vide letter dated June 28, 2014, submitted a common reply, which was taken on record. The submissions made in the said letter, in brief, are as under:

- a. The Company runs the farm house with an objective to raise and sell animals to individuals/ firms who are desirous of buying animals for their business/ personal use. The purchasers are free to use the animals the way they want. The Company had not mobilized money through any schemes/ plans. It is rearing its own animals for gaining profits. Capacious is not involved in the rearing of the animals which are not owned by it. The

Company has no share in the profit of the purchaser and the possession of the animal is also handed over to the purchaser.

- b. Capacious had started selling the animals on installments, however, it had not received any response to the same and accordingly the planning was dropped. It sells animals after taking one time payment from the purchasers on execution of a specific agreement between the Company and the purchaser. In case of one time payment, the only purpose of stating the cost of animals after four year, in 'scheme brochure' is to show the purchaser that there are immense profits in the business of sale and purchase of animals, so that the customers are motivated to purchase the animals from the Company.
 - c. The word 'co-owner' in the sale agreement refers to the Company with whom Capacious deals.
6. Before proceeding further, Capacious was afforded an opportunity of personal hearing on January 16, 2015. On the date fixed for personal hearing, Mr. Sumeet Singh Dhir, a Chartered Accountant appeared as the authorised representative of the Company and requested for an adjournment. The request for adjournment was initially rejected, however, considering the persistent requests the matter was adjourned to February 03, 2015. The authorised representative during the course of personal hearing was provided with the copy of the investors' complaint and was given the liberty to submit the written submission along with all the relevant documents pertaining to the entire business of the Company such as goat and pig business, for e.g. permissions from State Government, Animal Husbandry department, Agricultural Produce department etc. The Company was also directed to submit the Sales Tax department receipts, 'Mandi' Tax receipts and Octroi receipts and the documents relating to the sale of goats/ pigs along with the dates thereof.
7. On February 03, 2015, the authorised representative, Mr. Sumeet Singh Dhir appeared along with Mr. Puneet Kansal, Advocate and made oral submissions. The representatives also filed the written submission for the noticee namely Ms. Narmin Kaur Yadav and requested time for submitting the complete details as sought during the course of personal hearing on January 16, 2015.

During the course of personal hearing, the representatives were asked to provide the documents relating to the sale of goats/ pig for 2.4 Crore and the dates thereof and the supporting documents available with the Company relating to such sales. The Company was also asked to provide the list of customers, their details and the number of livestock sold to them. In case these have been sold in market then the Company was advised to submit the 'Mandi'/ Tax and octroi receipts. If they were sold to individuals, then the Company had to provide the details of the counterparty customer name, address, contact details, vaccination details, etc. The representatives were also asked to submit the documents which supported to the balance sheets of the company. For submitting these details along with the details asked earlier, the noticees were granted three weeks' time.

8. The submissions of Ms. Narmin Kaur Yadav, in brief are that she was one of the first directors of Capacious and had resigned on March 30, 2011. No business whatsoever was transacted by Capacious during the period of March 10, 2011 (i.e. the date of incorporation of Capacious) to March 30, 2011 (date of her resignation), except the issue of additional share capital by the shareholders. The initial share capital of Capacious subscribed by Ms. Narmin Kaur Yadav was transferred to Mr. Gurbakhsh Singh on March 30, 2011.

Mr. Gaurav Yadav and Mr. Gurbakhsh Singh, two of the noticees filed the written submission dated February 24, 2015, along with certain documents i.e. photograph of farm, pamphlets/ brochure showing dealing in sale and purchase of animal feed and bio-fertilizers, certificate from statutory auditor, copy of notification to show that 'no octroi' is levied on it, certificate of vaccination, copies of audited financial statements of the company for the financial year ending March 31, 2013 and March 31, 2014, copies of the income tax returns of the company for the financial year ending March 31, 2013 and March 31, 2014, copy of the bank account statement for the account maintained with Oriental Bank of Commerce for the period of April 03, 2012 to March 31, 2014, details of the vaccination done to goats from the Punjab Veterinary Vaccine Institute and the Department of Animal Husbandry. The submissions made vide letter dated February 24, 2015, in brief, are as under:

- a. The sale agreement reflects the concluded transactions of sale and purchase and the same cannot be termed as any scheme or arrangement. The Company initially for a month or two had insisted upon entering into an agreement at the time of transaction on sale of goat/ pig with the purchaser. However, as the vendees/ purchasers had serious objections on being made to sign the agreement (as most of them being rural and illiterate population). The concept of entering into agreement was discontinued altogether.
- b. The clause in the sale agreement regarding several co-owners of the farm animal was kept in the light of the firms, association of persons, etc. could be the owners of the livestock, but the transaction was being entered into by only one person. The agreement signed with every purchaser contains a categorical declaration that the possession has been handed over in good health, in order to avoid allegation that the goat supplied is not of good health.
- c. The possession of the livestock was handed over to the purchaser at the time of sale and the same was duly accepted by the purchaser. Capacious had never dealt in the rearing of the animal once the same is sold to the purchaser. The livestock which remains unsold continues to be in the custody of Capacious and is reared by it.
- d. There was never any assured return/ buy back/ return of estimated cost of live stock by Capacious.
- e. The literature available on the website of Capacious showed that the same was in the nature of an offer by the Company to the prospective vendees of purchasing live stock from the Company on part payment option instead of one time advance payment. The said offer was never accepted by any of the vendees. The same is further proved from the balance sheet of the Company which do not have any such entry of the balance amount of sale recoverable from such vendees against the sale of livestock to the tune of 2.40 crore (approx.)
- f. The estimated cost of the developed livestock at the end of four years have been projected by the Company only as a marketing strategy with a view to project the benefits of undertaking the activity of the rearing of livestock to the prospective customers. With the said purpose only the Company had projected in its literature that if a person purchases a pig/ kid at the cost of 5,000 today and if the same is reared for a period of four years, the estimated cost of the same would be 10,000 approximately at the end of those four years and thus the prospective purchaser would stand benefited from the same.

- g.** There was no scheme/ arrangement under which the Company had entered into any agreement for rearing of the purchased livestock. If it would have been, then the purchaser/ vendee would have insisted upon entering into an agreement wherein the Company would be bound to buyback the said livestock after rearing it for a period of four years.
 - h.** Initially, octroi duty was being levied on a number of items in the areas falling within the limits of municipal corporation as well as municipalities in the State of Punjab. However, with effect from the year 2006, in view of the amendments in the concerned laws, payments of octroi duty has been done away with in the State of Punjab on all the items except electricity, petrol and diesel.
 - i.** Further, in the State of Punjab the payment of sales tax was in force till the year 2005, thereafter the Punjab General Sales Tax Act, 1948 was superseded by the Punjab VAT Act, 2005. Under the provisions of the new Act and subsequent amendments thereto no value added tax (VAT) is now payable on fertilizers including bio fertilizer and on the sale of animal feed / cattle feed, fresh milk, livestock and animal hair.
 - j.** There is no provision of law in the State of Punjab which requires any person dealing in the sale and purchase of livestock to get itself registered with the Department of Animal Husbandry. However, with a view to provide vaccination to the livestock as may be required from time to time, the Company makes a request to the Department of Animal Husbandry to provide the vaccination. Upon receipt of request in this regard, the vaccination is provided by the Department of Animal Husbandry.
 - k.** The Company has been operating since March 2011, in its business activity of sale and purchase of livestock as well as animal feed and bio fertilizer and there has been no single complaint against the Company.
 - l.** The director of the Company Mr. Gurbakhsh Singh is one of the leading progressive farmers in the State of Punjab.
 - m.** The sale/ purchase of goats/ pigs and other products is not in the notified areas and there is no 'mandi tax' payable.
- 9.** I have considered the SCN, reply, the oral and written submissions of the noticees, the documents furnished by Capacious and the material available on record. I note that during

the course of personal hearing, the Company was asked to provide the documents relating to the sale of goats/ pig for 2.4 Crore and the dates thereof and the supporting documents available with the Company relating to such sales. The Company was also asked to provide the list of customers, their details and the numbers of the livestock sold to such customers. Further, if the sale was made to individuals, then the Company was asked to provide the details of the counterparty customer name, address, contact details, vaccination details, etc. I note that the Company has not submitted the list of its customers and has also failed to provide the details of the livestock sold to such customers.

While proceeding further, I note that the main allegation leveled against Capacious is that the plans/ schemes operated by it are in the nature of CIS and Capacious was offering these schemes without obtaining registration from SEBI in contravention of the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. The directors of Capacious have also been alleged to be responsible for the illegal conduct of the business of Capacious. The issues that now arise for my consideration is: Whether Capacious is operating a CIS without obtaining registration from SEBI?

10. Whether Capacious is operating a CIS without obtaining registration from SEBI?

- a. Capacious in its reply to the SCN has argued that it is involved in the sale and purchase of the live stock and runs goat and pig farm. It has also been said that the Company had initiated to sell the animals on installments but had not received any response and accordingly, the plan was dropped. Thereafter, the Company only sold animals after taking one time payment from the purchasers.
- b. I now consider the documents submitted by Capacious and other noticees along with the submissions: As per the Memorandum of Association and Articles of Association of Capacious the main objects of the Company are to :

"...

A.

1. ... keep, maintain, breed, grow, sell, marketing and otherwise deal as brokers, commission agents, importers, exporters, in all kinds of cattle, cows, buffalos, pigs, goats, poultry and all other kinds of live stock.

2. *To establish, erect and manage and run dairy farm, poultry farm and bee farm and operate a Multi Level Marketing (Within India or Abroad) of all kinds of animals and their products, ... either through direct buying and selling or on agreement basis (to deal in any product or commodity) through different channels and way outs viz. retail outlets, ...*

3. *... to establish hatcheries, poultry farms, animal husbandry centers, aqua culture farms ... and to manufacture, produce, manage, protect, preserve, cherish, tin, pack, process, cut clean, dry, import, export, buy, sell, distribute, supply or otherwise deal in all types of animal products ... and to do all such incidental acts and things necessary for the attainment of above objects."*

c. I note that as per the 'scheme brochure' which was earlier available on the website of Capacious (the same was later removed from the website of Capacious), it had two schemes i.e. part payment and one time payment for the sale of livestock and its rearing. The brochure provided options for the purchase of livestock through the installments scheme as well as one time purchase of livestock. As per the plan advertised, Capacious had mentioned that the estimated cost of the developed animal after 48/ 72 months in the case of the installment payment and after 4 years in the case of one time payment plan. It had also provided for the rearing of the already purchased animal and had offered working benefits associated with its plan like direct incentives and commission to its agents. An extract of the said 'scheme brochure' is as under:

Table A

Number of Goat(s) / Pig(s)	If you want to pay per month then you have to pay	Total cost of Animal you have to pay in 48 months	Estimated Cost of developed Animal after 48 months	Estimated Cost of developed animal 72 months
1	300	14,400	17,500	24,000
2	500	24,000	30,000	40,000
3	1,000	48,000	62,000	84,000
4	2,000	96,000	1,40,000	1,90,000
5	5,000	2,40,000	3,80,000	5,10,000

Table B

(One Time Payment)

No. of Animal	Cost	Cost of Animal after 4 years
1 piglet/ kid	5,000	10,000
1 goat/ pig	10,000	20,000
2 goat/ pig	20,000	40,000
5 goat/ pigs	50,000	1,00,000
12 goat/ pigs	1,25,000	2,50,000
25 goats/ pigs	2,50,000	5,00,000

50 goats/ pigs	5,00,000	10,00,000
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From the above, it can be seen that the consideration for the purchase/ sale of goat/ pig and estimated cost of developed animal after 48 months and 72 months in part payment option has been provided. Further, the one time payment plan provides the cost of the animal after four years. I note that the cost of animal is uniformly same with no mention as to how old it is. It is also intriguing to note that cost of a goat and pig is the same.

Capacious in its submissions has argued that it had not sold any animal on installment as there was no response to such plan from anyone and it had sold animals only after taking one time payment from the purchasers. However, it is difficult to accept this submission as it has clearly failed to provide the documents relating to the sale of goats/ pig, list of its customers along with the details and numbers of livestock sold to these. Further, the submission of Capacious that the estimated cost at the end of four years was a marketing strategy for projecting the benefits of rearing of livestock cannot be accepted as the same only hints to the device of luring the investors towards the Company.

- d. Application Form:** The same contains the fields like the personal details of the applicant like name, address, purchase details, sponsor name, etc.
- e. Sale Agreement:** It is seen that the Company had entered in to 'sale agreement' with its customers. The sample 'sale agreement' mentions as under:

"...

AND WHEREAS the SELLER organizes the arrangement of goat(s) of different breeds, to respective PURCHASER.

AND WHEREAS the SELLER has already purchased/ made arrangements for purchasing/ procuring the goat(s) for its PURCHASER.

...

PAYMENT

That the Purchaser is hereby purchasing goats from the Seller on his own free will and that he also hereby promises to pay the entire/ total amount for the said purchases as mentioned herein below, to the Seller. Moreover it is specifically understood that along with the Purchaser herein there may be several co-owners of the farming animals, i.e. Goat(s).

...

RIGHTS OF SELLER

...

That the Purchaser hereby independently states, confirms and declares that all the tax concessions, benefits, subsidiaries and all other kinds of concessions and benefits including financial grants, etc. from all Government Department/ Semi Government Undertakings and all Local Authorities are receivable by the Seller, and the Purchaser shall not have any claim or rights over the same.
..."

The 'sale agreement' contains the details such as the name and address of the customer, cost of goat, etc. It is noted that the document does not mention about the 'breed' of the animal inspite of having a specific column for the same and also helps in identifying the animal. Further, it is strange to note that there are several co-owners of the animal. It is even more curious in the light of the assertion of the Company that it did not keep the animal with it. If indeed such was the case there appears to be no need to state that an animal may have several co-owners.

- f. From the discussion above, it is observed that Capacious was inviting applications from the customers for the *purchase of goat/pig* under its plans. I also note the following:
- i. Capacious at the time of execution of sale agreement also makes arrangements for purchasing/ procuring the animals for the customers.
 - ii. Capacious has neither provided the list/ details of the customers and number of livestock sold to such customers nor the delivery receipts of the livestock sold to the customers, despite being specifically asked for.
 - iii. Capacious had made outward sale of 3,499 goats amounting to 2,40,79,541 at the rate of 6,881.84 per goat.
 - iv. The 'application form' contains a field for providing the details of 'nominee' which has no relevance in the outright sale of the animals.
 - v. The argument regarding the clause asking for the co-owners details in the sale agreement is of no merit as Capacious had no obligation to mention the name of any person as the name of firm/ trade name could have been sufficient.
 - vi. The provision that an animal may have several co-owners militates against the assertion that only outright sales may be done.
 - vii. The assertion of the Company that mention of the price of the animal after four years is only a marketing strategy, seems to be dubious.

g. Having considered the above, now I proceed to deal with the charges leveled against Capacious. The main allegation leveled against Capacious is that it is operating CIS without obtaining registration from SEBI. A brief note on the background of CIS Regulations and how the provisions came to be framed is given below:

Several entities were mobilizing huge money by issuing various instruments and offering very high rates of return inconsistent with the normal rate of returns and then misutilising these funds, for the purposes not disclosed at the time of inviting the investments, thereby not only causing loss to the investors who lost their life savings to such unscrupulous entities, but also eroding the confidence of the general public. Considering the high element of risk associated with such schemes, the Government of India felt that it was necessary to set up an appropriate Regulatory framework to regulate such entities. Hence, in order to protect the interest of the investors and to ensure that only legitimate investment activities are carried on, vide press release dated November 18, 1997, the Government of India communicated its decision that schemes through which instruments such as agro bonds, plantation bonds, etc., are issued by the entities, would be treated as Schemes under the provisions of the SEBI Act and directed SEBI to formulate Regulations for the purpose of regulating these CISs. It was against this background that Section 11AA of the SEBI Act and the CIS Regulations came to be framed. Thereafter, several press releases and newspaper advertisements/ notices were issued by SEBI from time to time in the leading newspapers bringing to the notice of the investors and the persons concerned, the various instructions issued by SEBI/ Central Government from time to time in respect of the functioning of the CIS. The press releases further stated that instruments such as agro bonds, plantation bonds should be treated as CIS coming under the SEBI Act. All the companies having such activities were required to file information with SEBI. Moreover, general public was also informed that no person can sponsor or cause to be sponsored any new CIS and thereafter raise further funds. Meanwhile, a committee was formed to examine and finalize the draft regulations for CIS to structure a comprehensive regulatory framework. Subsequently, the notification of CIS Regulations was issued on October 15, 1999. As per the CIS Regulations, any person who has been operating a CIS at the time of commencement of the CIS Regulations was required to make an application to SEBI for

the grant of registration under the provisions of the regulation, within a period of two months from the date of the notification. No entity was allowed to run a CIS scheme without obtaining the Certificate of Registration from SEBI.

- h. The definition for 'collective investment scheme' was inserted in the SEBI Act, 1992, vide the Securities Laws (Amendment) Act, 1999 w.e.f. February 22, 2000. According to the definition, CIS means any scheme or arrangement which satisfies the conditions specified in Section 11 AA of the SEBI Act, which provides as under:

"(1) Any scheme or arrangement which satisfies the conditions referred to in subsection (2) or [sub-section (2A)]¹ shall be a collective investment scheme.

[Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under the exemptions from CIS sub-section (3), involving a corpus amount of one hundred Crore rupees or more shall be deemed to be a collective investment scheme.]²

(2) Any scheme or arrangement made or offered by any [person]³ under which,
(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized solely for the purposes of the scheme or arrangement;
(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement;
(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;
(iv) the investors do not have day to day control over the management and operation of the scheme or arrangement.

[(2A)] Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.]

(3) Notwithstanding anything contained in sub-section (2) [or sub-section (2A)], any scheme or Arrangement:

- i. made or offered by a co-operative society*
- ii. under which deposits are accepted by non-banking financial companies*
- iii. being a contract of insurance*
- iv. providing for any scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund*
- v. under which deposits are accepted under section 58A of the Companies Act, 1956*
- vi. under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society*
- vii. falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982(40 of 1982);*
- viii. under which contributions made are in the nature of subscription to a mutual fund;*

¹ Inserted by Securities Laws (Amendment) Ordinance, 2014

² Inserted by Securities Laws (Amendment) Ordinance, 2014

³ Substituted for 'company' by The Securities Laws (Amendment) Ordinance, 2014

*[ix. such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,]
shall not be a collective investment scheme."*

The term 'securities' in section 2(h) of the Securities Contracts (Regulation) Act, 1956 was amended vide the Securities Laws (Amendment) Act, 1999, w.e.f. February 22, 2000, to include units or any other instrument issued by any collective investment scheme to the investors in such schemes.

- i. Let me now, proceed to test the characteristics of the impugned schemes/ plans floated and carried on by the Company against the four conditions under Section 11AA(2) of the SEBI Act.
- i. The first condition is that *the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement.* Capacious accepts funds from the public for its schemes towards the sale/ upbringing of goats/ pigs. The customers/ investors of Capacious willing to subscribe to the schemes get the option of payment i.e. part payment or one time.

The 'sale agreement' states that *"the SELLER has already purchased/ made arrangements for purchasing/ procuring the goat(s) for its PURCHASER", 'the arrangement for purchasing' points towards the pooling of resources. Further, the 'scheme brochure' states that "... can purchase live stock (Goats/Pigs) from Capacious Farming Pvt. Ltd. at part payment option instead of one time advance payment plan and you can do an agreement for rearing of your already purchased animal and can get following benefits ...".* The same hints that the objective for a customer would be to subscribe to one of the plans offered by the Company for the purchase of goat/ pig. Further, the 'sale agreement' as provided by Capacious, does not specify the details of the breed of the goat/ pig sold to the customer in order to identify the animal. The Company despite its assertion that all sales were made on outright basis, failed to give any evidence of sale. It even failed to give names of its customers. In the light of the above and also the provisions in the sale agreement, it can be concluded that the 'contributions, or payments made by the investors, are pooled and utilised by Capacious

for the purposes of the scheme or arrangement', the scheme being sale of goat/ pig. Thus, satisfying the first condition as stipulated in Section 11AA(2)(i) of the SEBI Act.

- ii. The second condition is that *the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable from such scheme or arrangement.* As discussed above, in Table A and B the 'scheme brochure' provides for the estimated cost of the developed animal after 48 months and 72 months in the case of part payment option and cost of the animal after 4 years in one time payment option. From the same, it can be said that the same assures the customers/ investors of 'the expected cost' which means nothing but profits. Further, the scheme brochure also stated that "*On quarterly advance installment you will get 2% extra benefit on end of agreement. On half yearly advance installment you will get 5% extra benefit on end of agreement. On yearly advance installment you will get 10% extra benefit on end of agreement*" indicating another element of return. This makes it clear that the customers/ purchaser had made the contribution/ payment with a view to receive the profits/ income/ property/ return on their initial investments that may accrue to them as applicable, thus attracting the second condition as stipulated in Section 11AA(2)(ii) of the SEBI Act.
- iii. The third condition is that *the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors.* The fourth condition is that *the investors do not have day to day control over the management and operation of the scheme or arrangement.* In this regard, I note the relevant clauses from the 'scheme brochure' i.e. "... *you can do an agreement for rearing of your already purchased animal*". The same points that Capacious was engaged in the rearing of the animals, which had been sold to the customers. In view of the same, it can be said that the customer/ investor does not take part in the acquisition or rearing of the animal. Further, it can also be concluded that the goats/ pigs pertaining to the plan/ scheme were managed by the Company and the customers do not have day to day control over the scheme.
- j. As all the four conditions specified under section 11AA(2) of the SEBI Act are satisfied in this case, the schemes/ plans promoted, launched, carried on and operated by the Company are in the nature of CIS in terms of section 11AA(1). In this regard, I place my

reliance on the observations of the Hon'ble Supreme Court, made in the matter of *PGF Limited & Ors. Vs. Union of India & Anrs.* (Civil Appeal No. 6572 of 2004):

"Therefore, the paramount object of the Parliament in enacting the SEBI Act itself and in particular the addition of Section 11AA was with a view to protect the gullible investors most of whom are poor and uneducated or retired personnel or those who belong to middle income group and who seek to invest their hard earned retirement benefits or savings in such schemes with a view to earn some sustained benefits or with the fond hope that such investment will get appreciated in course of time. Certain other Section of the people who are worstly affected are those who belong to the middle income group who again make such investments in order to earn some extra financial benefits and thereby improve their standard of living and on very many occasions to cater to the need of the educational career of their children.

38. Since it was noticed in the early 90s that there was mushroom growth of attractive schemes or arrangements, which persuaded the above vulnerable group getting attracted towards such schemes and arrangements, which weakness was encashed by the promoters of such schemes and arrangements who lure them to part with their savings by falling as a prey to the sweet coated words of such frauds, the Parliament thought it fit to introduce Section 11AA in the Act in order to ensure that any such scheme put to public notice is not intended to defraud such gullible investors and also to monitor the operation of such schemes and arrangements based on the regulations framed under Section 11AA of the Act. ...

... ..

40. It will have to be stated with particular reference to the activity of the PGF Limited, namely, sale and development of agricultural land as a collective investment scheme, the implication of Section 11AA was not intended to affect the development of agricultural land or any other operation connected therewith or put any spokes in such sale-cum-development of such agricultural land. It has to be borne in mind that by seeking to cover any scheme or arrangement by way of collective investment scheme either in the field of agricultural or any other commercial activity, the purport is only to ensure that the scheme providing for investment in the form of rupee, anna or paise gets registered with the authority concerned and the provision would further seek to regulate such schemes in order to ensure that any such investment based on any promise under the scheme or arrangement is truly operated upon in a lawful manner and that by operating such scheme or arrangement the person who makes the investment is able to really reap the benefit and that he is not defrauded It is, therefore, apparent that all other schemes/arrangements operated by all others, namely, other than those who are governed by sub-section 3 of Section 11AA are to be controlled in order to ensure proper working of the scheme primarily in the interest of the investors.

... ..

42. Therefore, in reality what sub-section (2) of Section 11AA intends to achieve is only to safeguard the interest of the investors whenever any scheme or arrangement is announced by such promoters by making a thorough study of such schemes and arrangements before registering such schemes with the SEBI and also later on monitor such schemes and arrangements in order to ensure proper statutory control over such promoters and whatever investment made by any individual is provided necessary protection for their investments in the event of such schemes or arrangements either being successfully operated upon or by any misfortune happen to be abandoned, where again there would be sufficient safeguards made for an assured refund of investments made, if not in full, at least a part of it.

... .. In the light of our above conclusions on this ground it will have to be held that Section 11AA is a valid provision, not suffering from any infirmity, as it does not intrude into the specific activities of sale of agricultural land and its development.

... ..

It is needless to state that as per the agreement between the customer and the PGF Limited, it is the responsibility of the PGF Limited to carry out the developmental activity in the land and thereby the PGF Limited undertook to manage the scheme/arrangement on behalf of the customers. Having regard to the location of the lands sold in units to the customers, which are located in different states while the customers are stated to be from different parts of the country it is well-nigh possible for the customers to have day to day control over the management and operation of the scheme/arrangement. In these circumstances, the conclusion of the Division Bench in holding that the nature of activity of the PGF Limited under the guise of sale and development of agricultural land did fall under the definition of collective investment scheme under Section 2(ba) read along with Section 11AA of the SEBI Act was perfectly justified and hence, we do not find any flaw in the said conclusion.

... ..

53. We, therefore, hold that Section 11AA of the SEBI Act is constitutionally valid. We also hold that the activity of the PGF Limited, namely, the sale and development of agricultural land squarely falls within the definition of collective investment scheme under Section 2(ba) read along with Section 11AA (ii) of the SEBI Act and consequently the order of the second respondent dated 06.12.2002 is perfectly justified and there is no scope to interfere with the same. In the light of our above conclusions, the PGF Limited has to comply with the directions contained in last paragraph of the order of the second respondent dated 06.12.2002"

- k. The entity needs to be registered with SEBI in order to run the CIS activities. Section 12(1B) of the SEBI Act mandates that no person, shall sponsor or cause to be sponsored or carry on or caused to be carried on any CIS unless it obtains a certificate of registration from SEBI in accordance with the CIS Regulations. Capacious has clearly failed to do so. Regulation 3 of the CIS Regulations provides that no person other than a Collective Investment Management Company which has obtained a certificate under the said regulations shall carry on or sponsor or launch a 'collective investment scheme'. A person can launch or sponsor or cause to sponsor a collective investment scheme only if it is registered with SEBI as a Collective Investment Management Company. Therefore, the launching/ floating/ sponsoring/ causing to sponsor any 'collective investment scheme' by any 'person' without obtaining the certificate of registration in terms of the provisions of the CIS Regulations is in contravention of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations. I note that Capacious has launched a CIS without obtaining certificate of registration from SEBI, it has contravened the provisions of Section 12(1B) of the SEBI Act and Regulation 3 of the CIS Regulations.

11. The SCN has been issued to the Company and its directors namely Mr. Gaurav Yadav, Mr. Gurbakhsh Singh and Ms. Narmin Kaur Yadav. I note from the details available on record that Ms. Narmin Kaur Yadav had resigned from Capacious on March 30, 2011. Although, Ms. Narmin Kaur Yadav has submitted that no pooling had happened during her tenure as Director of Capacious during March 10, 2011 to March 30, 2011, there is no proof available on record to accept the same. In view of the same, it is difficult to give a clean chit to her and I hold her also responsible as a director in the Company for carrying on unregistered CIS activities. Therefore, I have no hesitation in holding that Capacious and its directors were engaged in the fund mobilising activity by floating/ sponsoring/ launching, unregistered/ unauthorised CIS, as defined in the Section 11AA of the SEBI Act.
12. With the above observations, I, in exercise of the powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11(1), 11(4) and 11B thereof and Regulation 65 of the SEBI (Collective Investment Scheme) Regulation, 1999, hereby issue the following directions:
- a. Capacious Farming Pvt. Limited [PAN: AAEECC3138N] and its directors viz., Mr. Gaurav Yadav [PAN: ACQPY5145E], Mr. Gurbakhsh Singh [PAN: BCLPS1117G] and Ms. Narmin Kaur Yadav shall abstain from collecting any money from the investors or launch or carry out any Collective Investment Schemes including the schemes which have been identified as a Collective Investment Scheme in this Order.
 - b. Capacious Farming Pvt. Limited and its directors viz., Mr. Gaurav Yadav, Mr. Gurbakhsh Singh and Ms. Narmin Kaur Yadav are restrained from accessing the securities market and are prohibited from buying, selling or otherwise dealing in securities market for a period of four years.
 - c. Capacious Farming Pvt. Limited and its directors viz., Mr. Gaurav Yadav, Mr. Gurbakhsh Singh and Ms. Narmin Kaur Yadav shall wind up the existing Collective Investment Schemes and refund the money collected by the said company under the schemes with returns which are due to its investors as per the terms of offer within a period of three months from the date of this Order and thereafter within a period of fifteen days, submit a winding up and repayment report to SEBI in accordance with the SEBI (Collective Investment Schemes) Regulations, 1999, including the trail of funds claimed to be

refunded, bank account statements indicating refund to the investors and receipt from the investors acknowledging such refunds.

- d. Capacious Farming Pvt. Limited and its directors viz., Mr. Gaurav Yadav, Mr. Gurbakhsh Singh and Ms. Narmin Kaur Yadav shall not alienate or dispose off or sell any of the assets of Capacious Farming Pvt. Limited except for the purpose of making refunds to its investors as directed above.
 - e. Capacious Farming Pvt. Limited and its directors viz., Mr. Gaurav Yadav, Mr. Gurbakhsh Singh and Ms. Narmin Kaur Yadav are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities, if held in physical form.
 - f. In the **event of failure** by Capacious Farming Pvt. Limited and its directors viz., Mr. Gaurav Yadav, Mr. Gurbakhsh Singh and Ms. Narmin Kaur Yadav **to comply with the above directions**, the following actions shall follow:
 - Capacious Farming Pvt. Limited and its directors viz., Mr. Gaurav Yadav, Mr. Gurbakhsh Singh and Ms. Narmin Kaur Yadav shall remain restrained from accessing the securities market and would further be prohibited from buying, selling or otherwise dealing in securities, even after the period of four years of restraint imposed in **paragraph 12(b)** above, till all the Collective Investment Schemes of Capacious Farming Pvt. Limited are wound up and all the monies mobilized through such schemes are refunded to its investors with returns which are due to them.
 - SEBI would make a reference to the State Government/ Local Police to register a civil/ criminal case against Capacious Farming Pvt. Limited, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and
 - SEBI would make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the company, Capacious Farming Pvt. Limited.
 - SEBI shall initiate attachment and recovery proceedings under the SEBI Act and rules and regulations framed thereunder.
13. This Order shall be without prejudice to the right of SEBI to initiate prosecution proceedings under Section 24 and adjudication proceedings under Chapter VIA of the

Securities and Exchange Board of India Act, 1992 against Capacious Farming Pvt. Limited and its directors viz., Mr. Gaurav Yadav, Mr. Gurbakhsh Singh and Ms. Narmin Kaur Yadav, including other persons who are in default, for the violations as found in this Order.

14. This order shall come into force with immediate effect.
15. Copy of this Order shall be forwarded to the stock exchanges and depositories for necessary action.

DATE : June 16th, 2015
PLACE : Mumbai

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA